

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL ANGELERI,

Plaintiff-Appellee,

v

B & P GROUP, INC.,

Defendant-Appellant.

UNPUBLISHED

August 22, 2006

No. 260134

Muskegon Circuit Court

LC No. 04-043052-CH

Before: Zahra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Following a bench trial, final judgment was entered in favor of plaintiff in this mortgage redemption matter. Judgment was based on a grant of equitable relief for plaintiff from the foreclosure by advertisement proceedings initiated by defendant. We affirm.

Plaintiff Michael Angeleri defaulted on a mortgage on his home, which was held by defendant B & P Group. Defendant commenced statutory foreclosure by advertisement proceedings and, on September 5, 2003, purchased the home at a sheriff's sale. The sale was subject to a six-month statutory redemption period, MCL 600.3240.

Defendant sent plaintiff a payoff statement on February 23, 2004, erroneously including charges that should not have been included in the redemption amount. Plaintiff recognized the error and recalculated the appropriate redemption amount on March 5, 2004. In doing so, his attorney miscalculated the amount of interest owed. Plaintiff paid less than the statutory amount owed to redeem the property. The deficiency was less than one percent of the amount owed.

After the statutory redemption period expired, plaintiff learned of the error and offered to pay defendant the appropriate redemption amount. Defendant refused, and commenced eviction proceedings on the property. Plaintiff initiated an action before the trial court to redeem his property, and the trial court used its equitable powers to enjoin the eviction proceedings and return title to the property to plaintiff after proper payment of the correct redemption value.

I. Foreclosure by Advertisement Does Not Bar All Equitable Relief

Defendant first argues that the trial court should not have granted equitable relief to plaintiff in this case involving statutory foreclosure by advertisement proceedings. This is a

question of law we review de novo. *Freeman v Wozniak*, 241 Mich App 633, 636; 617 NW2d 46 (2000).

Defendant foreclosed on plaintiff's mortgage pursuant to the foreclosure by advertisement procedures found in MCL 600.3201 *et seq.*¹ Defendant argues that, because it foreclosed on plaintiff's property pursuant to a "totally statutory procedure," the trial court had no equitable jurisdiction over the matter and its grant of equitable relief to plaintiff was inappropriate. Consequently, defendant reasons that, because plaintiff did not pay the correct redemption amount within the six-month redemption period, he cannot redeem the property, and title should permanently vest with defendant.

Generally, our Supreme Court requires strict compliance with foreclosure statutes. *Detroit Trust Co v Detroit City Service Co*, 262 Mich 14, 47; 247 NW 76 (1933). Our Supreme Court has long held that "[t]he right to redeem from a foreclosure at law is a legal right created by the statute, and can neither be enlarged nor abridged by the courts." *Wood v Button*, 205 Mich 692, 703; 172 NW 422 (1919). However, neither this Court nor our Supreme Court has been so harsh as to prohibit any equitable considerations from affecting a trial court's ruling on a statutory matter. In *Detroit Trust Co v George*, 262 Mich 362, 364; 247 NW 697 (1933), our Supreme Court noted that, even when a foreclosure is conducted pursuant to statute, equitable relief is still available in cases of fraud, accident, or mistake. *Id.*, quoting *Palmer v Palmer*, 194 Mich 79, 80-81; 160 NW 404 (1916).

In *Gordon Grossman Bldg Co v Elliott*, 382 Mich 596, 603; 171 NW2d 441 (1969), our Supreme Court reaffirmed this principle. The *Gordon Grossman* Court noted that in redemption from foreclosure proceedings governed by statute, "[a]bsent some unusual circumstances or additional considerations not within the ambit of the statute, this Court must follow the clear and plain meaning of the statute." *Id.* Again, although the Supreme Court emphasized that compliance with the clear and plain meaning of the redemption statute is essential, it also recognized that, in extraordinary circumstances, a trial court has some flexibility to grant equitable relief from the strict provisions of the redemption statute. *Id.* at 603-605.

More recently, our Supreme Court again reaffirmed that equitable relief is available in some circumstances where the procedure for redemption of foreclosed property is governed by statute. In *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 55; 503 NW2d 639 (1993), our Supreme Court noted, "MCL 600.3240 specifies the requirements for redemption, leaving no room for equitable considerations absent fraud, accident, or mistake." "Thus, the *Senters* Court concluded that in the absence of fraud, accident or mistake, the possibility of injustice is not enough to tamper with the strict statutory requirements." See *Freeman, supra* at 637. Accordingly, although strict compliance with the requirements of statutory redemption procedures, such as those found in MCL 600.3240, is required, equitable considerations necessitating a deviation from the requirements of this statute are permitted in cases of fraud, accident, or mistake.

¹ In particular, redemption of a foreclosed premises by a mortgagor is governed by MCL 600.3240.

II. Equitable Relief on the Facts of This Case

Defendant argues that the mistake it made in providing erroneous payoff requirements and amounts are irrelevant and did not bear on plaintiff's mistake in calculating the correct payoff amount. Accordingly, plaintiff is not entitled to equitable relief because there was no "mutual mistake"; plaintiff simply made a unilateral mistake, which does not warrant equitable relief. We disagree.

Had defendant provided the correct payoff, plaintiff would not have been required to calculate his own payoff amount from the erroneous information provided by defendant. It is undisputed that neither defendant nor plaintiff had calculated a proper payoff amount, consistent with the mortgage and allowable expenses, until after proceedings began in this action. We find defendant's legal distinction between "mutual" mistake and the circumstances of this case a distinction without a difference. *Ghaffari v Turner Const Co*, 473 Mich 16, 19 n 1; 699 NW2d 687 (2005). The trial court did not err in granting equitable relief on the facts before it.

Contrary to defendant's assertions, plaintiff's miscalculation of the interest due upon payoff resulted in part from defendant's claim of entitlement to reimbursement of taxes, insurance, and costs to which defendant was not legally entitled, and the consequent erroneous payoff statement prepared by defendant. In the payoff statement, defendant included charges that should not have been included in the redemption amount. Because of the erroneous inclusion of these charges, plaintiff reasonably, albeit incorrectly, concluded that the per diem interest amount was also incorrect.² He believed that the interest included interest accumulation for these unwarranted charges. Because the dispute concerning allowable charges could not be resolved, the parties could not arrive at a correct or agreed-upon payoff before the end of the statutory redemption period. In light of this dispute, plaintiff's counsel made a good faith effort to calculate and timely pay the proper amount due on behalf of plaintiff.

Defendant correctly points out that its payoff statement advised plaintiff to "contact [defendant's] loan operations department to verify the total payoff amount prior to remitting funds." However, in light of defendant's wrongly-held position on allowable charges, it is unlikely that plaintiff would have been provided the correct redemption amount even had a request for verification been made before remitting the funds on Friday, March 5, 2004.

The trial court found that the amount plaintiff offered was less than the correct amount by a fraction of one percent,³ and was based, in part, on the faulty numbers provided by defendant. As the trial court noted, plaintiff in good faith sought to make full payment of the redemption amount on March 5, 2004, within the six-month redemption period, and but for a minor miscalculation in the interest due, he would have done so. Upon further dispute of the payoff amount with defendant on the next business day, Monday March 8, 2004, plaintiff attempted to reconcile the difference by paying the additional amount defendant claimed was due, but

² The payoff transaction was handled by plaintiff's counsel, who made the payoff calculations.

³ Defendant concedes that plaintiff submitted a payoff of \$105,430.25 on March 5, which was approximately \$600 less than the amount due at the time.

defendant rejected plaintiff's efforts. Defendant subsequently received the entire amount to which it was entitled. Accordingly, the trial court did not err in concluding that equitable relief was warranted.

III. Reasonable Reliance

Defendant next argues that, contrary to the trial court's conclusion, plaintiff did not demonstrate "reasonable reliance" on the information in defendant's February 23, 2004, payoff letter. In its opinion and order, the trial court stated:

Plaintiff made a good faith attempt to redeem the property, but the check was deficient because he reasonably relied on the number provided by defendant. Under these circumstances, this court chooses to invoke its equitable power to avoid harsh results.

Defendant contends that "reasonable reliance" cannot be shown in this case because the payoff letter instructed plaintiff to contact defendant's office for the correct payoff calculation. We find defendant's argument without merit.

We review the trial court's factual findings for clear error. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

In support of its argument, defendant cites authority that requires a showing of reasonable reliance in other legal contexts, e.g., to avoid contractual obligations or to establish a claim of fraud or misrepresentation. Defendant cites no authority for the proposition that the concept of "reasonable reliance" in those contexts applies to equitable relief in this case. An appellant may not merely assert an error and then leave it up to the Court to discover and rationalize the basis for his claims or search for supporting authority. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). To the extent that defendant merely challenges the court's factual finding of reasonable reliance, we find no clear error.

The parties were at odds concerning the allowable charges that could be included in the payoff amount. It is undisputed that defendant's payoff statement included charges that were improper and that defendant continued to demand payment of improper or incorrect charges even after the March 5, 2004, redemption date had passed. Given these circumstances, the trial court did not clearly err in finding that plaintiff reasonably relied on defendant's payoff statement and the per diem interest rate defendant provided in an effort to calculate the proper payoff amount.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Donald S. Owens